UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN
Mailed: April 2, 2007

Opposition No. 91164764

Brink's Network,
Incorporated

v.

The Brinkmann Corporation

Elizabeth A. Dunn, Attorney:

This case comes before the Board on applicant's motion, filed February 7, 2007, to compel discovery responses. Opposer filed a response opposing the motion. Proceedings are considered to have been suspended with the filing of the motion to compel. *See* Trademark Rule 2.120(e).

On September 22, 2005, applicant served opposer with its first set of interrogatories and opposer responded with a general objection that the interrogatories exceeded the limit of seventy-five interrogatories set by the Board's rules. Proceedings thereafter were suspended. On December 12, 2006, the Board resumed proceedings and reset discovery to close February 15, 2007. On December 13, 2006, applicant served opposer with an amended first set of interrogatories. On January 18, 2007, the parties conferred by telephone and

established that applicant intended the revised set of interrogatories to replace, and not to supplement the first set of interrogatories; that opposer maintained that the discovery period reset in the resumption order did not contemplate additional discovery by applicant; that the combination of the two sets of interrogatories exceeded seventy-five in number; and that opposer would not respond to the interrogatories absent a Board order compelling it to do so. On the following day applicant sent opposer a letter confirming the discussion.

Trademark Rule 2.120 (d) (1) reads, in part, as follows: "[t]he total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts...". Inasmuch as applicant made explicit in the parties' telephone conference what was clear in the title of its interrogatories, that is, that the second set was a replacement for the set to which opposer had objected, we consider only applicant's revised first set of interrogatories. After careful review, the Board has determined that the number of interrogatories does not exceed seventy-five.

Accordingly, applicant's motion to compel is granted, and at such time as action on the instant proceeding is

resumed, opposer will be allowed time to respond to applicant’s revised first set of interrogatories, without objection.

The Board notes the parties’ stipulation to extend discovery by one month, filed February 21, 2007, and to suspend proceedings pending the outcome of settlement negotiations, filed March 15, 2007 . The stipulations are approved.

In the event that proceedings are resumed, discovery will be reset, opposer will be allowed time to respond to applicant's revised first set of interrogatories, without objection, as set forth above, and applicant will be allowed time to notice the deposition of a Fed. R. Civ. P. 30(b)(6) witness to further discuss the responses provided by opposer.

Proceedings herein are suspended for six months pending settlement discussion between the parties, subject to the right of either party to request resumption at any time.

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